

# THE NEW CHAPTER 33 REGULATIONS

A GUIDED TOUR

# POLICY AND PURPOSE

- Physical restraint and seclusion may only be used as an **emergency** intervention when the behavior of a student presents an **imminent risk of injury or harm** to the student or others.

# APPLICATION OF RULE

- This rule applies to actions of a **covered entity** and its employees, contractors and agents during the conduct of the covered entity's educational program.
- **Covered Entity** means an entity that owns, operates or controls a school or educational program that receives public funds from the Maine Department of Education

# CONTRACTS WITH NON-COVERED ENTITIES

- The Department of Education and any covered entity that places or funds the placement of a student in an educational program owned, operated or controlled by an **entity other than a covered entity** must include **in the contract** with that other entity a requirement that the entity and its employees, contractors and agents **comply with the Rule** while the student is engaged in the educational program.

# PHYSICAL RESTRAINT

- An intervention that restricts a student's freedom of movement or normal access to his or her body, and includes physically moving a student who has not moved voluntarily.

# PHYSICAL RESTRAINT DOES NOT INCLUDE:

- Physical escort - **temporary** touching or holding of the hand, wrist, arm, shoulder, hip or back for the purpose of **moving a student voluntarily**
- Physical prompt - a **teaching technique** that enables the student to **learn or model the physical movement** necessary for the development of the desired competency
- Physical contact for the purpose of **comforting** the student, accepted **voluntarily**
- Seat belts
- Medically prescribed harness

# PERMITTED USES OF PHYSICAL RESTRAINT

- Only as an **emergency** intervention when the behavior of a student presents **imminent risk of injury or harm** to the student or others
- Only after other **less intrusive interventions** have **failed** or been **deemed inappropriate**
- Implemented by staff **certified** in a state-approved **training program** to the extent possible
- To move a student only if **the need** for movement **outweighs the risks** involved in such movement

# PROHIBITED FORMS AND USES OF PHYSICAL RESTRAINT

- Not for punitive purposes, staff convenience or to control challenging behavior
- Not to prevent property destruction or disruption in the absence of **imminent risk of injury**
- No restraint that restricts the free movement of the diaphragm or chest or restricts the airway so as to interrupt normal breathing or speech
- No restraint that relies on pain for control
- No aversive procedures, mechanical or chemical restraints



# MONITORING RESTRAINT

- At least **two adults** must be present at all times except when, for safety reasons, waiting for a second adult is precluded
- Monitoring must be continuous until terminated

# TERMINATION OF PHYSICAL RESTRAINT

- Must be discontinued as soon as possible once student is no longer presenting imminent risk of injury or harm to self or others
- If continues for more than 10 minutes, an **administrator or designee** determines whether continued restraint is warranted, and continues to monitor every 10 minutes until terminated
- If attempts to release have been unsuccessful, may request assistance from outside sources; may request assistance from parents at any time

# SECLUSION

- The involuntary confinement of a student alone in a room or clearly defined area from which the student is physically prevented from leaving
- Timeout (a student requests, or complies with an adult request for, a break) is not seclusion.

# PERMITTED USES OF SECLUSION

- Only as an **emergency** intervention when the behavior of a student presents **imminent risk of injury or harm** to the student or others
- Only after other **less intrusive interventions** have failed or been **deemed inappropriate**
- Implemented by staff **certified** in a state-approved **training program** to the extent possible

# PROHIBITED USES OF SECLUSION

- Not for punitive purposes, staff convenience or to control challenging behavior
- Not to prevent property destruction or disruption in the absence of **imminent risk of injury**
- May not take place in a locked room

# MONITORING SECLUSION

- At least **one adult** must be physically present - not in the room or defined area but situated so that the **student is visible at all times**
- Monitoring must be continuous until terminated

# TERMINATION OF SECLUSION

- Must be discontinued as soon as possible once student is no longer presenting imminent risk of injury or harm to self or others
- If continues for more than 10 minutes, an administrator or designee shall determine whether continued seclusion is warranted, and shall continue to monitor every 10 minutes until terminated
- If attempts to release have been unsuccessful, may request assistance from outside sources; may request assistance from parents at any time

# LOCATION OF SECLUSION

- Seclusion can be achieved in any part of a school building with adequate light, heat, ventilation and of normal room height
- If a specific room is **designated** as a **seclusion room**, it must be a minimum of 60 square feet with adequate light, heat, ventilation, be of normal room height, contain an unbreakable observation window in a wall or door and be free of hazardous material and objects with which a student could self-inflict bodily injury



# NOTIFICATION OF INCIDENT

- To an **Administrator** (or designee)
  - Orally, ASAP but no later than end of school day
  - Out of district placement, by phone within 24 hours (or next school day)
- To **Parents**
  - By administrator (or designee) ASAP Practical but no later than same school day; leave phone message if necessary or use emergency contact info
  - If occurs outside school day, ASAP following emergency protocol
- **Serious Bodily Injury or Death**
  - Follow local health & safety procedures
  - Notify **DOE** within 24 hours or next school day

# WHAT IS AN INCIDENT?

- All actions **between** the time a student **begins** to **create risk of harm** and the time a student **ceases to pose a risk of harm** and **returns to regular programming**

# DOCUMENTATION

- Incident Report completed and provided to administrator ASAP Practical, not later than 2 school days.
- DOE will provide Incident Report form
- Copy of Incident Report to parents within 7 calendar days, and to administrator of sending district if out of district placement

# RESPONSE TO INCIDENT

- Debriefing within 2 school days:
  - With all staff persons involved
  - With student
  - When serious bodily injury occurs requiring emergency medical treatment, ASAP but not later than next school day
- After debriefing:
  - Develop and implement written plan for response and de-escalation, or
  - Review and, if appropriate, revise existing plan

# MULTIPLE INCIDENTS

- After 3<sup>rd</sup> incident in school year:
  - Special ed/504 student, IEP/504 Team to meet within 10 school days and consider need for FBA and/or BIP (or amend existing BIP)
  - Other students, team to meet within 10 school days and consider need for referral to special ed and for FBA and/or BIP
    - Team made of parent, administrator (or designee), teacher, staff member involved and other staff members (as appropriate)
  - Reasonable documented efforts to encourage parent participation in meetings

# CUMULATIVE REPORTING

- Building level – on a quarterly and annual basis:
  - Number of restraint incidents
  - Number of students placed in restraint
  - Number of seclusion incidents
  - Number of students placed in seclusion
  - Number of serious bodily injuries to students
  - Number of serious bodily injuries to staff
  - Superintendent/chief administrator to review data to identify how to reduce future incidents

# CUMULATIVE REPORTING (cont.)

- Reporting to DOE – annual basis:
  - Number of restraint incidents
  - Number of students placed in restraint
  - Number of seclusion incidents
  - Number of students placed in seclusion
  - Number of serious bodily injuries to students
  - Number of serious bodily injuries to staff

# STAFF TRAINING

- Sufficient number of staff shall maintain certification in approved training program
- List of staff with training made available in each building and central office
- DOE shall maintain a directory of approved training programs



# LOCAL POLICY

- Local policies consistent with Rule within 90 days from effective date of Rule
- Annual info to staff re: Rule and local policies
- Annual notice to parents re: Rule and local policies
- Procedure for parents to file complaint
  - Investigate complaint
  - Make written findings
  - Determine corrective action where appropriate

# COMPLAINT PROCESS

- First must follow **local** complaint process
- If dissatisfied, parent may file complaint with **DOE**
  - **Review results** of local process
  - May **conduct own investigation**
  - **Issue written report** within **60 days**
  - **Develop CAP** if violation found